

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT NUMBER DIR-TSO-3359
HEWLETT PACKARD ENTERPRISE COMPANY**

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Hewlett Packard Enterprise Company (HPE) with its principal place of business at 3000 Hanover Street, Palo Alto, CA 94304.

B. Compliance with Procurement Laws

This Contract is consequential to an Assignment Agreement with the effective date of November 1, 2015 made between DIR and Hewlett Packard Company (HPC) to DIR Contract Number DIR-TSO-2538. The Assignment Agreement is attached hereto as Attachment 1 and incorporated herein by reference. This contract is in compliance with applicable procurement laws of the State. Upon execution of this Contract, a notice of award for DIR Contract Number DIR-TSO-3359 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract DIR-TSO-3359, Attachment 1, Assignment Agreement and DIR Contract Number DIR-TSO-2538 through Amendment 3 thereto except to the extent modified by the following Appendices, Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Agreement for Software Licensing and Software and Hardware Support and any negotiated and agreed Customer Statements of Work; Appendix E, Terms for Software-as-a-Service and NonStop Products and Services; Appendix F, Master Lease Agreement (MLA); Appendix F-1 MLA Lease Purchase Schedule; F-2 MLA Schedule (FMV); then Exhibit 1, HPC response to RFO DIR-TSO-TMP-211, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-211, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract DIR-TSO-3359, then DIR-TSO-2538 and all amendments to it, then Appendix A, then Appendix B, then Appendix C, then Appendix D, any negotiated and agreed Customer Statements of Work, then Appendix E, then Appendix F, then Appendix F-1, then Appendix F-2, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be from November 1, 2015 ("Effective Date") through July 3, 2016. Prior to expiration of the original term, DIR and Vendor may extend the Contract upon mutual agreement, by amendment for up to two (2) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Hewlett Packard Manufacturer Branded Hardware and Software and Related Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the HPC response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Services and Support related to Hewlett Packard Hardware and/or Software as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one half of one percent (.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM

Manager, Contracts & Vendor Management

Technology and Sourcing Office
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:
Public Sector Legal Counsel
Hewlett Packard Enterprise Company
5400 Legacy Drive
Plano, Texas 75024
Phone: (972) 605-3075
Facsimile: (972) 605-3491

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in this Section 7 and Appendices D and E of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the Software license terms language in this Section 7 and Appendix D. Vendor and Order Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor for HPE Branded Software. Any purchases of third party Software shall be subject to the third party's license terms.

It is the Customer's responsibility to read the third party Shrink/Click-Wrap License Agreement and determine if the Customer accepts the license terms. Customers are bound by, and will abide by such third party Shrink/Click-wrap License terms unless the Customer does not agree with the license terms, then

Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-Wrap License Agreement language from the software publisher, which the parties shall agree to in writing.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Service Agreements, or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

8. Authorized Exceptions to Appendix A for Products and Related Services

1. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Products and Related Contracts, as listed below are hereby added as follows:

A. Section 3. Definitions is hereby replaced in its entirety as follows:

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;

- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

B. Compliance Check – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

C. Contract – the document executed between DIR and Vendor into which this Appendix A is incorporated.

D. CPA – refers to the Texas Comptroller of Public Accounts.

E. Day – shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

F. Order Filler – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

G. Purchase Order or Order - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

H. State – refers to the State of Texas.

I. Affiliate of a party means an entity controlling, controlled by, or under common control with, that party.

J. HPE Branded means Products and Services bearing a trademark of service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.

K. Product means hardware and software listed in HPE's standard price list at the time of HPE's acceptance of Customer purchase order, and including products that are modified, altered, or customized to meet Customer requirements ("Custom Products").

L. Technical Service means integration or other technical or customizable services performed by HPE under a Statement of Work or other Supporting Materials.

M. Service means Support and Technical Services.

N. Specification means technical information about Products published in HPE Product manuals, user documentation, and technical data sheets in effect on the date HPE delivers Products to Customer.

O. Support means hardware maintenance and repair, software maintenance, training, installation and configuration, and other standard support services provided by HPE, and includes "Custom Support," which is any agreed non-standard Support as described in a Statement of Work.

P. Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and

their supplements, Statements of Work, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Vendor website.

Q. Contractor means Hewlett Packard Enterprise Company, excluding Order Fulfillers.

B. Section 4. General Provisions, A. Entire Agreement is hereby replaced in its entirety as follows:

A. Entire Agreement

The documents set forth in Contract section 1.C (Order of Precedence) constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract documents.

C. Section 4. General Provisions, B. Modification of Contract Terms and/or Amendments, 2) is hereby replaced in its entirety as follows:

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order or Statement of Work and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

D. Section 5. Intellectual Property Matters, A. Definitions, 1) is hereby replaced in its entirety as follows:

1) "*Work Product*" or "*Deliverables*" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible items or things that have been prepared, created, developed, invented or conceived at any time following the effective date of the Contract.

E. Section 5. Intellectual Property Matters, A. Definitions, 3) is hereby replaced in its entirety as follows:

3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables.

F. Section 5. Intellectual Property Matters, A. Definitions, 4) is hereby replaced in its entirety as follows:

- 4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract.

G. Section 5. Intellectual Property Matters, A. Definitions, 5) is hereby replaced in its entirety as follows:

- 5) "Vendor IP" means, as between Vendor and Customer, Vendor's ownership of all materials, software (whether written or machine-readable) and the copyrights, patents, trademarks, trade secrets and all other (a) owned by or licensed to Vendor or one of its Affiliates prior to the Effective Date of the Contract; (b) all Intellectual Property Rights developed by Vendor or one of its Affiliates outside the scope of this Contract, and (c) all modifications, enhancements, and derivative works thereof.

H. Section 5. Intellectual Property Matters, B. Ownership is hereby replaced in its entirety as follows:

B. Ownership

As between Vendor and Customer,

- a) The Deliverable(s) and all Intellectual Property Rights associated with those Deliverable(s) will be owned by the Vendor at creation and will not be considered works made for hire. The Vendor grants to the Customer a non-exclusive, royalty-free, site-wide, irrevocable license to use, copy, and distribute the Deliverable(s) and related documentation according to the terms and conditions of this Contract and Supporting Materials. For the purposes of this license, "site-wide" includes any State of Texas office regardless of its physical location. Customer may further sublicense those Deliverables to its Affiliates or third party service providers, strictly in furtherance of Customer's internal use.
- b) The State may modify the Deliverable(s) and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in the Deliverable(s) other than those granted in this Contract.
- c) The State may copy the Deliverable(s) to multiple hard drives or networks.
- d) The State may copy the Deliverable(s) in the course of routine backups for the purpose of recovery.
- e) In the event that the Vendor ceases to conduct business, or ceases to support the Deliverable(s), the State's license will not cease. The license may be terminated if used in a manner that would violate the terms of this Contract and Supporting Material.
- f) Notwithstanding the license grants, any Third Party IP incorporated into any licensed Deliverable(s) will be subject to the license terms applicable to such Third Party IP.
- g) The State and the Vendor will continue to own their respective Intellectual Property Rights developed before entering into the Contract or developed outside the scope of this Contract, and all modifications or derivative works

thereof. Any software licensed through the Vendor and sold to the State will be licensed directly to the State.

I. Section 5. Intellectual Property Matters, C. Further Actions is hereby replaced in its entirety as follows:

C. Further Actions

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of applicable Intellectual Property Rights in the Work Product to Customer including but not limited to the execution, acknowledgement and delivery of such further documents in a form agreed by the parties.

J. Section 5. Intellectual Property Matters, D. Waiver of Moral Rights is hereby replaced in its entirety as follows:

D. Waiver of Moral Rights

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in any portion of the Work Product that contains “Customer” content, which Vendor may now have or which may accrue to Vendor’s benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. However, Vendor does not waive any Moral Rights or rights in the Work Product for any Software or templates that Vendor may deliver as part of the Services. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term “Moral Rights” shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

K. Section 5. Intellectual Property Matters, E. Confidentiality is hereby replaced in its entirety as follows:

E. Confidentiality

In the performance of the Services hereunder, either party may receive or have access to documents, technical information, information about product plans and strategies, promotions, customers, and related technical, financial or business information, which the disclosing party considers to be the confidential information of that party or its third party contractors or suppliers (“Confidential Information”). The following will apply to any such Confidential Information to the extent consistent with the Texas Public Information Act and its trade secret exemptions:

- 1) Before any Confidential Information is disclosed, the parties will first agree to disclose and receive such information in confidence. If then disclosed, the

Confidential Information will be marked as confidential at the time of disclosure, or if disclosed orally but stated to be confidential, will be designated as confidential in a writing by the disclosing party summarizing the Confidential Information disclosed and sent to the receiving party within thirty (30) days after such oral disclosure;

2) Confidential Information may be used by the receiving party only with respect to the performance of its obligations under this Contract, and only by the employees or contractors of the receiving party and its employees, agents or contractors who have a need to know such information for purposes of this Contract. The receiving party will protect, and will ensure that its employees, agents and contractors will protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the receiving party uses to protect its own confidential information of a like nature;

3) The receiving party's confidentiality obligation will be for a period of three (3) years after the date of disclosure. **IF CUSTOMER REQUIRES IT CONFIDENTIAL INFORMATION TO BE PROTECTED BEYOND THIS PERIOD, CUSTOMER MUST NEGOTIATE FURTHER TERMS WITH VENDOR.**

4) The confidentiality obligations of the parties will not extend to information that:

- a) was in the receiving party's possession before receipt from the disclosing party;
- b) is or becomes publicly known without breach by the receiving party;
- c) is rightfully received by the receiving party from a third party without a duty of confidentiality;
- d) is independently developed or learned by the receiving party;
- e) is disclosed by the receiving party with the disclosing party's prior written approval; or
- f) is required to be disclosed pursuant to the Texas Public Information Act and its trade secret exemptions.

L. Section 5. Intellectual Property Matters, F. Injunctive Relief is hereby replaced in its entirety as follows:

F. Injunctive Relief

The Contract is intended to protect both parties' proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the non-breaching party. Therefore, to the extent authorized by Texas Law and Constitution, both parties' acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by the non-breaching party, without requiring proof of irreparable injury as same should be presumed.

M. Section 5. Intellectual Property Matters, G. Return of Materials Pertaining to Work Product is hereby replaced in its entirety as follows:

G. Return of Materials Pertaining to Work Product

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor, including all materials embodying the Work Product, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete for which the Customer has paid all undisputed sums and any other documents or Confidential Information furnished by Customer to Vendor. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

N. Section 5. Intellectual Property Matters, I. Third-Party Underlying and Derivative Works is hereby replaced in its entirety as follows:

I. Third-Party Underlying and Derivative Works

In all instances, in its' SOW or quote, and before contracting with a customer the Vendor will disclose the use or incorporation of any Third Party IP into the Work Product or Deliverables and a description of the ownership and use rights that will be provided to the Customer. At the time of delivery, the Vendor will provide in writing the name and use of any Third Party IP, including information regarding the Vendor's authorization to include and utilize such Third Party IP. The notice shall include a copy of any ownership agreement or license that authorizes the Vendor to use the Third Party IP, If Vendor procures any Third Party IP for the State, then Vendor must assign or otherwise transfer to the State, or afford the State the benefits of, any license rights, including the manufacturer's warranty, for the Third Party IP.

O. Section 5. Intellectual Property Matters, J. Agreement with Subcontracts is hereby replaced in its entirety as follows:

J. Agreement with Subcontracts

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request. Vendor may redact confidential information, but

in any event must provide copies sufficient to ensure Vendor's compliance with this section.

P. Section 5. Intellectual Property Matters, L. Vendor Development Rights is hereby replaced in its entirety as follows:

L. Vendor Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials.

Q. Section 6. Product Terms and Conditions, B. Purchase of Commodity Items (Applicable to State Agency Purchases Only), 3) is hereby replaced in its entirety as follows:

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

R. Section 7. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies is hereby replaced in its entirety as follows:

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning Product warranties and returns. Product warranty and return policies for Customers will not be more restrictive than warranty and return policies for other similarly situated Customers for like products, or more costly consistent with section 8.C.3.

S. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 1) is hereby replaced in its entirety as follows:

1) Vendor Website

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include the product and services offered, product and service specifications, specific contract pricing expressed in dollars based upon Contract discounts off MSRP or List Price, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts

program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

T. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 3) is hereby replaced in its entirety as follows:

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall use commercially reasonable efforts to provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

U. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 5) is hereby replaced in its entirety as follows:

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State, which can be publicly accessed through the DIR site.

V. Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 3) is hereby replaced in its entirety as follows:

3) During the Contract term, if pricing for products, specific product configurations, or services available under this Contract is provided by the Contractor at a lower price to: (i) an eligible Texas Customer who is not purchasing those products, specific product configurations, or services under this Contract or (ii) to any other entity or consortia authorized by Texas law to sell said products and services to eligible Texas Customers, under like terms and conditions provided for the State for those commodities and services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement only applies to products, specific product configurations, or services quoted by Contractor for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. To the extent that either party identifies and confirms that better pricing is offered by Contractor in accordance with this section, both parties will utilize best efforts to amend this Contract within ten (10) days to reflect the lower price. Any Contract price changes pursuant to this section shall be effective for all transactions between Contractor and DIR Customers entered into on or after the date that the transaction, including the lower price was entered into.

W. Section 8. Pricing, Purchase Orders, Invoices, and Payments, I. Purchase Orders is hereby replaced in its entirety as follows:

I. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Negotiated and agreed Statements of Work shall be considered incorporated into the Customer Purchase Orders, if applicable. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

X. Section 8. Pricing, Purchase Orders, Invoices, and Payments, K. Payments is hereby replaced in its entirety as follows:

K. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor or Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. Any applicable payment schedule, as negotiated by the parties, will be set forth in the Statement of Work, if applicable. Any Services provided on a time and expense basis will be invoiced monthly, unless otherwise agreed in the Statement of Work or Support Material.

Y. Section 9. Contract Administration, A. Contract Managers, 2) is hereby replaced in its entirety as follows:

2) Vendor Contract Manager

Vendor shall provide a dedicated Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between an Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State. In such an event, Vendor requests thirty (30) calendar days' notice.

Z. Section 9. Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Time Submission of Reports, c) is hereby replaced in its entirety as follows:

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

AA. Section 9. Contract Administration, C. Records and Audit, 1) is hereby replaced in its entirety as follows:

The following requirement is subject to Chapter 321, Texas Government Code.

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

BB. Section 10. Vendor Responsibilities, A. Indemnification, 2) is hereby replaced in its entirety as follows:

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

CC. Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, a) is hereby replaced in its entirety as follows:

a) VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS, WHICH PERTAIN TO HPE BRANDED PRODUCTS AND SERVICES, INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER

AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES, VENDOR-NEGOTIATED SETTLEMENT AMOUNTS, AND COURT-AWARDED DAMAGES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

DD. Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, b) is hereby replaced in its entirety as follows:

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement, or (vi) use of the product or service in combination with product or services not provided under the Contract.

EE. Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, d) is hereby added in its entirety as follows:

d) Vendor will transfer to Customer any third party intellectual property infringement indemnification for non-HPE Branded Products, Software, and Services delivered under the Contract and transferable to Customer.

FF. Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel is hereby replaced in its entirety as follows:

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may

terminate its Purchase Order and related Service Agreement subject to the terms of subsections 11.B.(4), (5), and (6) of Appendix A.

GG. Section 10. Vendor Responsibilities, K. Limitation of Liability is hereby replaced in its entirety as follows:

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, incidental, indirect, lost revenue or lost profits, or consequential damages, whether arising in contract, tort (including negligence) or otherwise even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action or \$1,000,000, whichever is greater. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

In the event the Customer determines a need for additional insurance or liability caps, Customer shall indicate said additional need for inclusion in the Statement of Work or Vendor Purchase Order.

HH. Section 10. Vendor Responsibilities, N. Required Insurance Coverage is hereby replaced in its entirety as follows:

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A-rated by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage. With the exception of Workers' Compensation/Employers' Liability, the Customer and DIR will be included as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/ completed operations, where appropriate, with a separate aggregate limit of \$2,000,000.00 [Medical Expense each person: \$5,000; Personal Injury and Advertising Liability: \$1,000,000; Products/Completed Operations Aggregate Limit: \$2,000,000; Damage to Premises Rented to You: \$50,000]. Agencies may require additional Umbrella/ Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured; and
- d) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

II. Section 10. Vendor Responsibilities, P. Immigration, is hereby replaced in its entirety as follows:

P. Immigration

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

JJ. Section 11. Contract Enforcement, B. Enforcement, 1) Termination for Non-Appropriation by Customer, is hereby replaced in its entirety as follows:

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated:

- i) by the governing body on behalf of local governments, or;
- ii) by the Texas legislature on behalf of state agencies; or
- iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code.

In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract (except for Products shipped and Support and Services performed to the extent funds are available for payment), nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature, or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract (except for Products shipped and Support and Services performed to the extent funds are available for payment), nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

KK. Section 11. Contract Enforcement, B. Enforcement, 4) Termination for Cause, b) is hereby replaced in its entirety as follows:

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 11.B. of Appendix A, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

LL. Section 11. Contract Enforcement, B. Enforcement, 6) is hereby replaced in its entirety as follows:

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order or corresponding Statement of Work (if applicable) expires or is terminated, a Customer shall pay: 1) all amounts due for Products or Services ordered prior to the effective termination date and ultimately accepted, 2) any applicable early termination fees agreed to in such Purchase Order or Statement of Work; and 3) any travel charges and expenses incurred by Vendor and agreed in a Purchase Order or Statement of Work prior to incurring the charges or expenses.

MM. Section 11. Contract Enforcement, C. Force Majeure is hereby replaced in its entirety as follows:

C. Force Majeure

DIR, Customer, Vendor, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

NN. Section 14. Additional Terms are hereby added in its entirety as follows:

14. Additional Terms

A. Products

a) Title. Risk of loss or damage and title for Hardware Products will pass upon delivery to Customer or its designee. Where permitted by law, Vendor retains a security interest in Products sold until full payment is received.

b) Delivery. Vendor will use all commercially reasonable efforts to deliver Products in a timely manner. Vendor may elect to deliver Software and related product/license information by electronic transmission or via download.

c) Installation. If Vendor is providing installation with the Product purchase, Vendor's site guidelines (available upon request) will describe Customer requirements. Vendor will conduct its standard installation and test procedures to confirm completion and acceptance by customer.

d) Product Performance. All HPE Branded Hardware Products are covered by Vendor's limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of Vendor installation, or (where Customer delays Vendor installation) at the latest 30 days from the date of delivery. Non-Vendor branded products receive warranty coverage as provided by the relevant third party supplier.

e) Product Warranty Claims. When Vendor receives a valid warranty claim for a Vendor Hardware or Software Product, Vendor will either repair the relevant defect or replace the Product. If Vendor is unable to complete the repair or replace the Product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to Vendor (if Hardware) or upon written confirmation by Customer that the relevant Software product has been destroyed or permanently disabled. Vendor will pay for shipment of repaired or replaced Hardware or Software Products to Customer. If under warranty, shipment cost will be Vendor responsibility.

B. Services

a) Technical Services. Vendor will deliver any ordered Technical, training or other Services as described in the applicable Supporting Material.

b) Technical Services Acceptance. The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other Products or Services to be provided by Vendor.

c) Services Performance. Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such Service concerns and Vendor will re-perform any Service that fails to meet this standard.

d) Services with Deliverables. If Supporting Material for Services defines specific Deliverables, Vendor warrants those Deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies Vendor of such a non-conformity during the 30-day period, Vendor will promptly remedy the impacted Deliverables or refund to Customer the fees paid for those deliverables and Customer will return those Deliverables to Vendor via freight pre-paid and charged to Vendor.

- e) **Dependencies.** Vendor's ability to deliver Services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the Services.
- f) **Change Orders.** Vendor and Customer each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of Services and in dealing with issues that may arise. Requests to change the scope of Services or Deliverables will require a change order signed by both parties.

C. Support Services

HPE's support services will be described in the applicable Supporting Material, which will cover the description of HPE's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.

D. Eligibility

HPE's service, support and warranty commitments do not cover claims resulting from:

- a) improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
- b) Modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
- c) failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
- d) malware (e.g. virus, worm, etc.) not introduced by HPE; or
- e) abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.

E. Personal Information

Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered.

F. Compliance With Laws

Each party shall, in the performance of all of its rights and obligations under this Contract, comply with all applicable laws.

G. Remedies

This Contract states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

This Contract is executed to be effective as November 1, 2015.

Hewlett Packard Enterprise Company

Authorized By: Signature on File

Name: Matthew C. Keck

Title: Senior Counsel

Date: 10/28/2015

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Wayne Egeler on behalf of Dale Richardson

Title: Chief Operations Officer

Date: 10/30/2015

Office of General Counsel: Signature on File 10/28/2015
D. R. Brown